

1 A bill to be entitled
2 An act relating to fees in lieu of security deposits;
3 creating s. 83.491, F.S.; authorizing a landlord to
4 offer a tenant the option to pay a fee in lieu of a
5 security deposit; requiring the landlord to notify the
6 tenant of certain unpaid fees and costs within a
7 specified time after the conclusion of the tenancy;
8 prohibiting the landlord from filing an insurance
9 claim within a specified period of time; providing
10 requirements for the landlord and insurer if an
11 insurance claim to recover certain losses is filed;
12 prohibiting the landlord from accepting certain
13 payments; requiring the landlord to provide certain
14 written notice to the tenant; requiring a written
15 agreement signed by the landlord, or the landlord's
16 agent, and the tenant if the tenant decides to pay a
17 fee in lieu of the security deposit; prohibiting the
18 written agreement from contradicting certain laws;
19 requiring that certain information be in the written
20 agreement; requiring a specified disclosure in the
21 written agreement; providing options for paying the
22 fee; specifying that certain fees, insurance products,
23 and surety bonds are not security deposits; specifying
24 that landlords have exclusive discretion as to whether
25 to offer tenants the option to pay a fee in lieu of a

26 security deposit; prohibiting a landlord from
27 approving or denying an application for occupancy
28 based on a prospective tenant's choice to pay a fee in
29 lieu of a security deposit; requiring that landlords
30 who offer a tenant the fee option offer such option to
31 all new tenants renting a dwelling unit on the same
32 premises; providing an exception; providing
33 construction; providing applicability; providing an
34 effective date.

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36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 83.491, Florida Statutes, is created to
39 read:

40 83.491 Fee in lieu of security deposit.-

41 (1) If a rental agreement requires a security deposit, a
42 landlord may offer a tenant the option to pay a fee in lieu of
43 the security deposit.

44 (2)(a) If a tenant agrees to pay a fee in lieu of a
45 security deposit, the landlord must notify the tenant within 30
46 days after the conclusion of the tenancy of any costs or fees
47 that are due resulting from unpaid rent, fees, or other
48 obligations under the rental agreement, including, but not
49 limited to, costs required for repairing damage to the premises
50 beyond normal wear and tear.

51 (b) A landlord may not submit a claim with an insurer to
52 recover the landlord's losses associated with unpaid rent, fees,
53 or other obligations under the rental agreement, including, but
54 not limited to, costs required for repairing damage to the
55 premises beyond normal wear and tear until at least 15 days
56 after providing the tenant with the required notice under
57 paragraph (a).

58 1. The landlord must include an itemized list of any
59 unpaid amounts and the dates such amounts were due,
60 documentation supporting any itemized damages and costs of
61 repairs, and a copy of any written objection or report of any
62 communication of objection by the tenant when he or she submits
63 a claim to an insurer.

64 2. If an insurer pays a claim that was submitted under
65 this subsection to a landlord and the insurer has subrogation
66 rights, the insurer may, within 1 year after the tenancy that
67 was the subject of the claim ends, seek reimbursement from the
68 tenant for the amounts that were paid to the landlord. If the
69 insurer seeks reimbursement from the tenant, the following
70 apply:

71 a. The insurer must provide the tenant with all
72 documentation for losses that the landlord provided to the
73 insurer in support of the landlord's claim and a copy of the
74 settlement statement documenting the insurer's payment of the
75 landlord's claim.

76 b. The tenant has any defenses against the insurer which
77 the insurer would otherwise have against the landlord.

78 3. A landlord may not accept payment from both a tenant
79 and an insurer for amounts associated with the same rent, fees,
80 or damages.

81 (3) If a landlord offers a tenant the option to pay a fee
82 in lieu of a security deposit, the landlord must notify the
83 tenant in writing of all of the following:

84 (a) That the tenant has the option to pay a security
85 deposit instead of the fee.

86 (b) That the tenant may, at any time, terminate the
87 agreement to pay the fee in lieu of the security deposit and
88 instead pay a security deposit in the amount that is otherwise
89 offered to new tenants for a substantially similar dwelling unit
90 on the date that the tenant terminates the agreement.

91 (c) Whether any additional charges apply for the options
92 provided in paragraphs (a) and (b).

93 (d) The amount of the payments required for each option
94 the landlord offers.

95 (e) That the fee is nonrefundable, if applicable.

96 (f) That the fee is only for securing occupancy without
97 paying a required security deposit.

98 (g) That the fee payment does not limit or change the
99 tenant's obligation to pay rent and fees, if any, under the
100 rental agreement or limit or change the tenant's obligation to

101 pay the costs of repairing damage to the premises beyond normal
 102 wear and tear.

103 (h) That if the landlord uses any portion of the fee to
 104 purchase insurance, the tenant is not insured and is not a
 105 beneficiary of the landlord's insurance coverage, and that the
 106 insurance does not limit or change the tenant's obligations to
 107 pay rent and fees, if any, under the rental agreement or change
 108 the tenant's obligation to pay the costs of repairing damage to
 109 the premises beyond normal wear and tear.

110 (4) (a) If a tenant decides to pay a fee in lieu of a
 111 security deposit, a written agreement to collect the fee must be
 112 signed by the landlord, or the landlord's agent, and the tenant.
 113 The written agreement may not contain any clause that
 114 contradicts s. 83.45 or s. 83.47. The written agreement must, at
 115 a minimum, specify all of the following:

- 116 1. The amount of the fee.
- 117 2. How and when the fee is to be collected.
- 118 3. The process and timeframe in which a tenant must pay
 119 the security deposit specified in the rental agreement if the
 120 tenant defaults on the fee.

121 4. That the written agreement may be terminated at any
 122 time as long as the tenant pays the amount of the security
 123 deposit specified in the rental agreement.

124 5. If the tenant pays the amount of the security deposit
 125 specified in the rental agreement, then the tenant's default on

126 paying the fee or termination of the written agreement may not
 127 adversely impact the tenant's credit report.

128 (b) The written agreement specified under paragraph (a)
 129 must also include a disclosure in substantially the following
 130 form:

131
 132 FEE IN LIEU OF SECURITY DEPOSIT

133 THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY BOTH PARTIES
 134 AND THE TENANT AGREES TO PAY THE LANDLORD A FEE IN LIEU OF A
 135 SECURITY DEPOSIT AS AUTHORIZED UNDER SECTION 83.491, FLORIDA
 136 STATUTES. THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE
 137 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS UNDER THE
 138 RENTAL AGREEMENT, INCLUDING THE OBLIGATION TO PAY RENT AS IT
 139 BECOMES DUE AND ANY COSTS AND DAMAGES BEYOND NORMAL WEAR AND
 140 TEAR THAT THE TENANT OR HIS OR HER GUESTS MAY CAUSE. IF THE
 141 LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO PURCHASE
 142 INSURANCE, THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF
 143 SUCH COVERAGE. SUCH INSURANCE DOES NOT LIMIT OR CHANGE THE
 144 TENANT'S OBLIGATION TO PAY RENT AND FEES, IF ANY, UNDER THE
 145 RENTAL AGREEMENT OR TO PAY THE COSTS AND DAMAGES BEYOND NORMAL
 146 WEAR AND TEAR THAT THE TENANT OR HIS OR HER GUESTS MAY CAUSE.
 147 THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME AND STOP
 148 PAYING THE FEE AND INSTEAD PAY A SECURITY DEPOSIT AS PROVIDED IN
 149 SECTION 83.491, FLORIDA STATUTES.

150

151 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83,
152 FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND
153 OBLIGATIONS.

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155 (5) A fee in lieu of a security deposit may be:

156 (a) A recurring monthly fee, payable on the same date that
157 the rent payment is due under the rental agreement; or

158 (b) Payable upon a schedule that the landlord and tenant
159 choose and as specified in the written agreement.

160 (6) A fee collected under this section, or an insurance
161 product or a surety bond accepted, by a landlord in lieu of a
162 security deposit is not a security deposit as defined in s.
163 83.43(12).

164 (7) A landlord has exclusive discretion as to whether to
165 offer tenants the option to pay a fee in lieu of a security
166 deposit and is not required to offer such fee option to tenants.
167 However, if a landlord offers a tenant an option to pay a fee in
168 lieu of a security deposit, the landlord may not use a
169 prospective tenant's choice to pay, or offer to pay, a fee in
170 lieu of a security deposit as criteria in the determination to
171 approve or deny an application for occupancy, and the landlord
172 must also offer all new tenants renting a dwelling unit on the
173 same premises the option to pay a fee in lieu of a security
174 deposit, unless the landlord chooses to prospectively terminate
175 the fee option for all new rental agreements.

176 (8) (a) This section does not:
 177 1. Require a fee collected in lieu of a security deposit
 178 to be used to purchase an insurance product or surety bond; or
 179 2. Prohibit a tenant from being offered or sold an
 180 insurance product or a surety bond to present to the landlord in
 181 lieu of a security deposit if the offer or sale of such
 182 insurance product or surety bond complies with the laws of this
 183 state.
 184 (b) Acceptance by a landlord of an insurance product or a
 185 surety bond that is purchased or procured by a tenant, a
 186 landlord, or an agent of the landlord may not be considered an
 187 offer on the part of the landlord to allow a tenant to pay a fee
 188 in lieu of a security deposit for the purposes of subsection
 189 (7).
 190 (9) This section applies to rental agreements entered into
 191 or renewed on or after July 1, 2022.
 192 Section 2. This act shall take effect July 1, 2022.